IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 636 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

RASULMIYA AMIRMIYA SHAIKH

Appearance:

1. Criminal Appeal No. 636 of 1991

MR KOGJE, A.P.P. for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 05/02/2003

ORAL JUDGEMENT

1. The State of Gujarat has filed this Appeal against the Judgment and order of acquittal dated 30.4.1991 passed by the learned Chief Judicial Magistrate, Bharuch in Criminal Case No.19417 of 1990 acquitting the respondents - accused for the offence u/ss. 7 & 16 of the Prevention of Food Adulteration Act, 1954 (for short "The Act").

2. On 17.2.1990 at 4.00 p.m. the then Food Inspector Shri N.M.Patel had gone to the Flour Mill of the respondents - accused and collected the sample of "Besan" for the purpose of analysis. The same was sent to the Public Analyst after completing the formalities. The Report of the Public Analyst (Ex.32) shows that the sample of Besan was not conforming to the standards and the provisions laid down under the prevention of Food Adulteration Rules, 1955. On receiving the Report of Public Analyst, the Food Inspector submitted his Report (Ex.34) dated 19.4.1990/18.5.1990 to the Assistant Commissioner & Local (Health) Authority, Bharuch for obtaining sanction to prosecute the accused. Thereupon the sanction was accorded by the Local (Health) Authority on 6.6.1990 (Ex.10). Immediately, on the next day i.e. on 7.6.1990 complaint was filed before the Court of Chief Judicial Magistrate, Bharuch by Shri B.N.Shah, Food Inspector.

3. The Learned Magistrate, after considering the evidence led by the complainant, came to the conclusion that the complainant has failed to prove his case against the accused beyond reasonable doubt, therefore, he acquitted the accused by giving cogent reasons in his impugned order.

4. Learned A.P.P. Shri kogje, appearing for the appellant - State of Gujarat, vehemently submitted that the learned Magistrate was wrong in acquitting the accused by holding that only with a view to complete the target of taking immediate sample in a month the Food Inspector filed false case against the accused. He also submitted that the evidence of the complainant was fully corroborated by the evidence of Panch witness. He also submitted that the learned Magistrate was wrong in acquitting the accused on the ground that sanction accorded by the Authority to prosecute the accused was defective. He also submitted that before taking the sample of "Besan", bottles were dried and clean, inspite of that the learned Magistrate has given benefit of doubt.

5. Though the respondents - accused are duly served with the Notice in this Appeal for the reasons best known to them they have not preferred to appear through their learned Counsel. Be that as it may. In their absence this Appeal is heard and decided with due assistance of the learned A.P.P.

6. Having carefully gone through the impugned order of acquittal passed by the learned Magistrate it appears

that only with a view to complete the target the sample of "Besan" was taken by the Food Inspector from the Flour Mill of the respondents - accused. The Report of the Public Analyst shows that the sample of "Besan" was not in conformity to the standard and provision laid down under the provisions of the Prevention of Food Adulteration Rules, 1955. This fact itself is contrary to the Report itself. The sample was in conformity with the standard laid down under the Rules. What has been found in the Report of the Public Analyst was starch of Besan mixed with plenty of Whit flour. In the flour mill such type of things may be found. All these facts are not taken into consideration by the Sanctioning Authority while according sanction to prosecute the accused. That apart, there is no clear evidence to the effect that the bottles in which the sample was taken were clean or not. In that view of the matter if the learned Magistrate has given benefit of doubt to the accused then certainly this Court would not interfere in this acquittal Appeal.

In view of the above discussion this Appeal fails and is hereby dismissed.

sd/-

Date : February 05, 2003 (B.J.Shethna, J.)

sas